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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 778

AIRCOACH TRANSPORT ASSOCIATION, INC.,
QUAKER CITY AIRWAYS, INC.,
Petitioners,

v.

AMERICAN AIRLINES, INC.,
NATIONAL AIRLINES, INC., *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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INDEX

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented for Review	3
Statutes Involved	4
Statement of the Case	4
Basis for Federal Jurisdiction	9
Reasons for Granting the Writ	9
Conclusion	20
Appendix:	
Pertinent Statutes	21
Opinion of the Court of Appeals	25
Judgment	43

CITATIONS

CASES:

American Airlines v. *Civil Aeronautics Board*, App. D.C. , 231 F. 2d 483 (D.C. Cir. 1956)	13
Shields v. *Utah Idaho Central R. Co.*, 305 U.S. 177 (1938)	14
Swift & Co. v. *United States*, 343 U.S. 373, 382 (1952)	15
Phelps Dodge Corp. v. *National Labor Rel. Bd.*, 313 U.S. 194 (1941)	17
Denver & R. G. W. R. Co. v. *Union P. R. Co.*, 351 U.S. 321 (1956)	18

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Aircoach Transport Association, Inc., and Quaker City Airways, Inc., petitioners,[1] pray that a writ of

[1] Aircoach Transport Association, Inc., is a non-profit cooperative, including among its members 35 carriers, each of which was a party applicant before the Civil Aeronautics Board in this case. The Association was granted leave to intervene, and participated in this case in the court below. (R. 823) Quaker City Airways,

certiorari be issued to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled cause on July 19, 1956, and the Court's order entered on September 19, 1956, denying motion for rehearing.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the District of Columbia Circuit is reported at 98 U. S. App. D. C. 348, 235 F. 2d 845, and 4 Avi. 18,169 (CCH). The Opinions of the Civil Aeronautics Board (R. 452; 625) have not yet been officially reported, and are only partially reported at 1A Aviation Law Review 14,443, 14,553 (CCH).

JURISDICTION

The order of the United States Court of Appeals for the District of Columbia Circuit was entered on July 19, 1956, and petitioner's motion for rehearing was denied on September 19, 1956. By order dated December 12, 1956, the Chief Justice of the United States extended the time for filing this petition to and including February 16, 1957. Jurisdiction is conferred on this Court by 28 U.S.C. § 1254(1) and by Section 1006(f) of the Civil Aeronautics Act of 1938, as amended, 52 Stat. 1024, as amended by 63 Stat. 107, 49 U.S.C. 646(f).

Inc., one of the Association's members, was likewise granted leave to intervene. (R. 753) However, the Association presented the case for all of its members, including Quaker City Airways, Inc. The Association will perform the same function in this Court. The respondents objected to the intervention by the Association in the court below, which objection was overruled. If a similar objection is made in this Court, and sustained, Quaker City Airways, Inc., will prosecute the case in this Court.

QUESTIONS PRESENTED FOR REVIEW

1. When the Civil Aeronautics Board finds an immediate need for a special type, "supplemental" air service, may the Board temporarily authorize such service by exemption, and specifically reserve the question of whether such service should be authorized by certificates, pending the conclusion of the proceeding?

2. May the Civil Aeronautics Board create a special class of air carriers and authorize them to provide needed supplemental service without first deciding whether its scheme for permanent authorization of such air service should be by exemption or by certificate?

3. When a class of air carriers have been operating under an exemption which has been in existence for eighteen years and the Civil Aeronautics Board continues to regulate the class by the exemption process, must the Board again state its reasons for not regulating the class by the certification process?

4. Did not the Civil Aeronautics Board set forth sufficient findings of fact to support its decision to permit supplemental air carriers to engage in supplemental air transportation by exemption authority?

5. Was the Court of Appeals correct when it required of the Civil Aeronautics Board a line of reasoning and a series of related findings on the question of why the certification process was not used, although the Board specifically reserved that question and did make sufficient findings to support the use of the exemption process?

6. Does a change in an exemption authorization from an unlimited number of irregular common

carriage flights to a limited number of common carriage flights and an unlimited number of charter flights move the authorization so "much closer to the certificated services" that the Court may substitute its judgment that certificates should be issued for the Board's judgment that the exemption process should be used?

STATUTES INVOLVED

The pertinent sections of the Civil Aeronautics Act here involved are set forth in the Appendix to this petition.

STATEMENT OF THE CASE

In 1938, the Congress adopted the Civil Aeronautics Act to encourage and to develop aviation. That Act, as amended, created the Civil Aeronautics Board[2] and conferred upon it the duty of developing, as well as regulating, the civil aviation industry.

During the eighteen years since the Civil Aeronautics Act was developed, the technological evolution of aviation has been so great as to stagger the imagination. Development, expansion, experimentation—within the regulatory framework—are the great concern of the Civil Aeronautics Board.

In 1938, there were many more hours of private, nonscheduled, and miscellaneous flying than hours of flight by scheduled airlines. A dichotomy between scheduled and nonscheduled flying was quickly established by the newly-created Civil Aeronautics Board. One principal reason for this dichotomy is that the carrier certificated to carry air mail was

[2] Sometimes herein referred to as "the Board".

entitled to and did receive subsidy payments. The carriers who transported mail and operated regular routes on regular schedules were authorized to operate by virtue of certificates of public convenience and necessity issued pursuant to Section 401 of the Civil Aeronautics Act. The carriers who did not operate over regular routes with regular schedules — known variously as "nonscheduled," "irregular," and "independent" airlines—were authorized to operate by a class exemption issued under Section 416 of the Civil Aeronautics Act.

The exemption was granted in such terms that the existing nonscheduled carriers, as well as later formed companies, could engage in operations without a hearing, and without a certificate of public convenience and necessity.[3]

The Board has written the history of the next few years:

> "Conditions at the end of World War II, however, brought about a rapid expansion in the activities of the irregular carriers. First, the civilian demand for air travel increased tremendously after the war, and the certificated carriers, whose activities were severely limited during the war period, were faced with the problem of expanding their operations to meet the growing demand for air service. Second, a substantial number of veterans trained in the techniques of aviation sought to enter the field of aviation as independent operators. Their entry into the field was facilitated by the availability of surplus military aircraft, mostly C-46's and C-47's, which

[3] All carriers were strictly regulated with respect to safety, and rigid safety requirements were imposed upon all classes of carriers. This case concerns only the economic regulation of the carriers.

could be leased or purchased at a relatively small cost. Equipped with the larger aircraft, the irregulars sought to satisfy the enlarged demand which the certificated carriers were unable to meet. The traveling public readily accepted and patronized the rapidly expanding services of the irregulars to the point that they now constitute an important segment of the air transportation industry.

"Today, some fifty irregular air carriers provide a wide variety of services, domestically, overseas, and in foreign air transportation. These services are rendered primarily with DC-3, DC-4 and C-46 aircraft, although some of the larger carriers now operate Constellation and DC-6 aircraft. The services performed by the irregular carriers are of various types, including charter operations, individually-ticketed coach flights, specialized services, and military airlift. In the year 1954, the passenger operations of irregular carriers resulted in the generation of 1,252,680,000 revenue passenger miles. For the same period, cargo operations amounted to 54,249,000 cargo ton miles." (R. 459-460)

The Board, from time to time, had amended the exemption order under which the non-certificated carriers operated, and on September 21, 1951, instituted the instant proceeding. The proceeding before the Board encompassed, *inter alia:*

(1) An investigation to determine whether there was a public need for the services conducted by the non-certificated carriers, in addition to and supplemental to the services performed by certificated carriers and, if so,

(2) the type or types of supplemental service best adapted to meet the need;

(3) whether the Board was empowered to authorize such services by certificate under Section 401 or by exemption under Section 416;

(4) what conditions or other requirements should be imposed on the operations of these carriers. (R. 666-673)

The proceeding thus created was destined to become the longest case in the history of the Board. Sixty-three non-certificated carriers were made parties to the case, and given an opportunity to be heard.

In a sense, the case is a phase of the age-old battle between big business and small business. The positions of the two adversaries may be briefly stated. The certificated carriers contended that all individually-ticketed traffic should be reserved for those carriers who had acquired grandfahter rights under the 1938 statute. The supplemental carriers claimed that they should be continued in the new fields which they had developed while operating under exemption authority, and be permitted to share, in increasing degree, in the new traffic. The issue, simply stated, was the extent to which the new airline companies should be allowed to operate.

While the case was in progress before hearing examiners, and 30 applicants remained to be heard, the Board entered a procedural order.

The Board noted that the proceeding had two general purposes: (1) questions of public interest touching the role, if any, to be assigned to the non-certificated carriers to meet the requirements of the public convenience and necessity; and (2) questions of fitness and ability involving which of the various

applicants should be granted operating authority. Finding that the expeditious handling of the proceeding required its action, the Board separated the two classes of issues. First, it directed that the hearing continue in the earliest feasible time upon the "public interest" questions and, second, it deferred hearing of the fitness and qualification issues. (R. 711-715)

Hearings on the public interest issues were completed, an initial decision issued, oral argument was held before the Board, and the Board issued its decision. (R. 452-506)

The Board in its opinion found that there was a public need for supplemental service; that the demands for such service cannot be met by the certificated carriers; that the supplemental service was required by considerations of national defense; that the applicants' financial condition could and should be improved; that the old regulations had outlived their usefulness; that urgent action was necessary; that a temporary exemption was required in the public interest; that the present enforcement of section 401(a) of the Act constituted an undue burden on the class of supplemental air carriers by reason of the limited extent of, and unusual circumstances affecting, the operations of this class of air carriers.

Having reached these conclusions, the Board issued an order which created a class of supplemental air carriers and modified the operating authority formerly held by these carriers. The old regulation permitted the carriers to operate an unlimited number of charter and common carriage trips, but required the trips to be spaced at irregular intervals; the new regulation, permits an unlimited number of charter trips, but only

10 common carriage trips per month, and removes the requirement that trips be operated at irregular intervals.

The certificated carriers filed motions for reconsideration before the Board, which were denied. The certificated carriers filed petitions for review in the United States Court of Appeals for the District of Columbia Circuit. Upon review, that court reversed the order of the Board. It is that decision which your petitioners seek to have reviewed by this Court.

BASIS FOR FEDERAL JURISDICTION

The proceeding arose by virtue of applications before, and an investigation instituted by, the Civil Aeronautics Board pursuant to the provisions of the Civil Aeronautics Act. The orders of the Civil Aeronautics Board are subject to review by the United States Court of Appeals, and venue lies in that Court, as provided by Section 1006 of the Civil Aeronautics Act, 52 Stat. 1024, as amended by 63 Stat. 107, 49 U.S.C. 646.

REASONS FOR GRANTING THE WRIT

This case presents questions of public importance relating to the administration of the Civil Aeronautics Act. It also concerns the development of a class of supplemental air carriers whose services are demanded by the national defense and cannot otherwise be made available to the public. It involves the operating authority of some 66 supplemental air carriers, reduced by attrition to 49. These air carriers own and lease, as of the third quarter of 1953, a fleet of 97 airplanes, including 72 twin-engine and 25 four-engine transport planes. They fly billions of revenue

passenger-miles and millions of cargo ton-miles in aircoach, air charter, and military operations. It is their operating authority which is at stake.

I.

In this proceeding, the Civil Aeronautics Board was faced with the problem of changing its regulations which governed the operations of a large and important class of carriers. Originally, the Board had in effect a regulation which authorized an air carrier to engage in "non-scheduled" operations without first obtaining a certificate of public convenience and necessity from the Board. The post World War II growth of aviation and the availability of low priced surplus airplanes, which the Congress directed should be sold first to veterans, catapulted this class of carriers into new and expanding fields. They originated "aircoach" service and "all freight" service. (R. 459-463)

The Civil Aeronautics Board did not issue certificates to these carriers as they expanded into new fields, but continued to regulate their activities through exemptions. As could be expected, the certificated "grandfather" carriers opposed the development of these new carriers. The battle raged not only in the market place and before the Civil Aeronautics Board, but also in the Congress.

The Senate Select Committee on Small Business, after hearings, issued a report which, in pertinent part, recommended:[4]

> "Your committee recommends that the Civil Aeronautics Board should—

[4] Report No. 822, 83rd Cong., 1st Session, July 31, 1953, p. 17.

"1. *Issue a temporary regulation permitting the irregular carriers to fly 14 round-trip flights a month between any two points, pending the conclusion of the Large Irregular case.* — There appears to be ample authority for these operations under section 416 of the Civil Aeronautics Act. The Board should permit these flights to be pooled over a year's period so that the carriers can provide the supplementary type of air service in peak periods that the Board has suggested as the real place for these companies. Carriers operating under this broad authority should also be eligible for the movement of military personnel under contract to the Defense Department and for the movement of mail without subsidy under contract to the Post Office Department without regard to frequency or regularity of service."

Almost as though it considered the Committee Report a blueprint for action, the Civil Aeronautics Board took the action the Committee Report called for. First, it instituted the investigation, which is this proceeding. Then, it decided to permit the supplemental carriers to operate 10 trips per month (instead of 14 recommended in the Committee Report). The Board accordingly amended the regulations which governed the class of supplemental carriers to permit them to operate their new services.

The Board's action was not hasty. It had completed about one-half (in number of carriers) of its investigation when it decided to split the issues of the investigation into two parts: (1) the general public interest questions relating to the role of the supplemental carriers, and (2) the selection of qualified carriers.

The Board then proceeded to decide the public interest questions and, in its opinion, specifically stated:

> "Most of the applicants request that the authority to be granted them be in the form of a certificate, while most of the certificated interveners vigorously challenge our authority to grant certificates for supplemental operations. We need not decide that issue at this time. It would be more appropriate for us to determine the matter when we consider the qualifications of the individual applicants. Accordingly, this opinion is a statement of our future policy with regard to supplemental air transportation, and we shall defer to the conclusion of the case our decision as to whether the operating authority to be granted to the applicants who qualify shall be by certificate or by exemption. Pending decision on these matters, however, we see no reason to withhold the enlarged operating authority from this class of carriers." (R. 486-487)

Thus, the Board issued an interim exemption order to permit necessary operations until it decided if certificates should be issued.

The court below reversed the Board because the Court "cannot ascertain from the opinion or order . . . why [the Board] thinks certification of this supplemental service would not be in the public interest." (R. 768) The court below is requiring from the Board a conclusion on an issue which the Board specifically reserved; thereby demanding much more than the Civil Aeronautics Act requires. The court, in effect, is reading into Section 416 of the Civil Aeronautics Act a requirement which the Congress did not include—a requirement which may prevent the Board from taking immediate action when the need arises.

II.

The decision of the court below is in conflict with one of its own decisions interpreting the same section of the Civil Aeronautics Act. In the air mail case[5] the Court interpreted Section 416 to mean that the Board could grant a temporary exemption while the issue of certification is being decided. In the air mail case the Court affirmed the Board; in the instant case it reverses the Board, although the Board acted the same way under the same section of the Act in each case. It is respectfully submitted that this Court should exercise its jurisdiction to clarify the confusion created by the decision of the court below, and to remove from air carriers and the Board the burdens placed upon them by the court below.

The decision of the court below is also in conflict, in principle, with the decisions of this Court; Section 416(a) of the Civil Aeronautics Act expressly authorizes the Board to "establish such just and reasonable classifications or groups of air carriers for the purposes of this title as the nature of such air carriers shall require . . ." and Section 416(b) authorizes the Board to "exempt from the requirements of this title . . . any air carrier or class of air carriers." In the administration of the Civil Aeronautics Act, the Board has created six separate classes of air carriers which it regulates through the exemption process.[6]

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[5] *American Airlines* v. *Civil Aeronautics Board*, 97 App. D.C. 324, 231 F. 2d 493 (D.C. Cir. 1956).

[6] Alaskan Air Carriers, Noncertificated Cargo Carriers, Indirect Air Carriers, International Air Freight Forwarders, Air Taxi Operators, and the Supplemental Carriers. (See parts 292, 295,

The Congress left it to the wisdom and technical ability of the Board to decide what classes of carriers should be established and what classes should be exempted. The court below, however, believes that the supplemental carriers "are moved much closer to the certificated services" — so much closer that the Board should not, in the Court's opinion, continue to regulate them under the exemption process. By this the court below invades the province of the regulatory agency. In *Shields* v. *Utah Idaho Central R. Co.*, 305 U.S. 177 (1938) this Court held that it was for the Interstate Commerce Commission—not the courts—to decide if a carrier was an "interurban" electric railway and therefore exempt from regulation under the Interstate Commerce Act. Here, it is for the Board, not the court below, to decide if the supplemental carriers should be certificated or exempted.

An even greater conflict between the decision of the court below and the decisions of this Court appears when the history of the supplemental carriers is considered. Ever since 1938, when the Civil Aeronautics Act was adopted, the Board has regulated by exemption those carriers which are limited in the number of flights which they may operate between the same points. In continuing to use the exemption process, the Board said in its opinion:

> "There is equally no sound foundation for the repeated assertion that we are in effect granting certificates for route type services. It is true that we are for the first time lifting the requirement of irregularity. But we are still adhering to the

296, 297 and 298 of the Economic Regulations of the Board; 14 F.R. 3550, 14 F.R. 3522, 21 F.R. 2511, 15 F.R. 1866, 18 F.R. 8080, respectively.)

> fundamental requirement of limited frequencies —and so long as a carrier is confined to ten flights per month, this represents a severe and practical limitation upon its ability to participate in any market, and in our judgment will effectively confine the carrier to operations that are essentially supplemental in character." (R. 481)

The court below disputes the Board's judgment in this respect and holds that the supplemental carriers are moved much closer to the certificated services. However, at this stage of the case, the Board's findings are presumed to be supported by the evidence of record, and the court below errs when it differs with the Board on a question of fact.

Whether the system for regulating the operations of these carriers by exemption which has existed for over eighteen years should be displaced by another system is a question committed to the administrative judgment of the agency. This Court so held in *Swift & Co.* v. *United States,* 343 U.S. 373, 382 (1952).

Clear and unambiguous application of Section 416 of the Civil Aeronautics Act, which affects not only the air carriers but the whole regulatory scheme of air transportation is, petitioners believe, an important federal question. It is significant enough for this Court to resolve the doubt surrounding the section for once and for all.

III.

The court below misconceived the nature of the Board's decision.

The court below says:	*The Board says:*
"The question therefore is . . . whether the requirement that this class of carriers be certified is not in the public interest." (R. 767)	"We need not decide that issue at this time. It would be more appropriate for us to determine the matter when we consider the qualifications of the individual applicants." (R. 486)
"The purport of the discussion in the opinion of the Board is that the exemption power may be exercised to accomplish the *permanent* ends it has in mind for these supplemental carriers . . ." (R. 769)	"We made it clear in our Opinion (p. 29) that the scope of operations which we have authorized is *not fixed and final*, but that we intend to maintain a surveillance over the operations of the supplemental air carriers, reserving the right on an expedited basis to adjust downward the number of permissible frequencies . . ." (R. 628-629)

By its decision the court below would hamstring the Board in its effort to maintain a surveillance and control over the supplemental carriers which are available under the exemption process, but not available under the certificate procedure. The Board's examiners had already issued their initial decision finding that the Civil Aeronautics Act did not authorize the Board to issue certificates for supplemental service. The court below seems to have differed with the examiners, but the Board itself did not decide this issue. This Court should exercise its jurisdiction to make it clear that the Board can issue interim exemption authority under Section 416 of the Civil Aeronautics Act without first deciding if it has power to issue certificate authority under Section 401(a) of the Act.

IV.

The court below requires the Board to incorporate a *rationale* in its opinion which this Court does not require of other administrative agencies. The court below did not attempt to ascertain why the Board acted as it did.[7] Instead it reversed the Board because the Board did not explain (to the satisfaction of the court) why it was using the exemption tool instead of another tool. That, petitioners submit, is a matter for the Board. As this Court has held, "[T]he relation of remedy to policy is peculiarly a matter for administrative competence . . ." *Phelps Dodge Corp.* v. *National Labor Rel. Bd.*, 313 U.S. 194 (1941). The findings of the Board exceeded in particularity the findings of the Interstate Commerce Commission

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[7] There were ample reasons given in the opinion.

The court below agrees that the Board's opinion contains adequate findings to support the conclusion that "some action should be taken promptly." (R. 765-766)

The Board then made the specific finding:

> "As previously indicated, there remain thirty applicants who have not yet been heard with regard to their qualifications. It is, therefore, apparent that a considerable period of time will elapse before this case can be finally determined. To wait until the conclusion of the case before implementing our new policy would be contrary to the public interest." (R. 487)

Thus, the Board found not only that prompt action was necessary but also that certification would be delayed "for a considerable period of time."

The Board went further and found that "there exists *today* a need for the enlarged authority . . ." and "Also, many of the carriers . . . require the enlarged authority . . . for their continued economic well being." (R. 487)

which were held sufficient in *Denver & R. G. W. R. Co.* v. *Union P. R. Co.*, 351 U.S. 321 (1956).

V.

In reversing the Board, the court below adopted a concept which harkens back to the days of NRA and the fear of free competition which was bred during the depression of the 1930's. The court indicated that the "protection" of the certificated carriers "is required by the general scheme of the" Civil Aeronautics Act. This belief appears to pervade its entire opinion. (R. 755-771) However, the Civil Aeronautics Act, was not designed to *protect* but to *promote* and *develop* the new industry of air transportation. It specifically provides, in Section 2, for "encouragement," "promotion," "development," and "competition to the extent necessary to assure the sound development of an air-transportation system." The court below was so concerned with the protection of one group of carriers that it lost all interest in the fate of the group of supplemental carriers. The Board's interest and obligation is the overall public interest in a nationally adequate air-transportation system. It is this overall interest which the court below failed to consider. Petitioners submit that this Court, looking at the broad purposes of the Civil Aeronautics Act will confirm the Board's judgment.

VI.

The Board itself has not sought certiorari. Petitioners believe that the Board is not seeking for a review of the decision of the Court of Appeals because of a most unusual development which occurred after this petition was prepared.

The judgment of the court below reverses and sets aside the decision of the Board. (R. 755, 771) The judgment, however, does not become effective until a certified copy of opinion and judgment is transmitted from the court to the Board.

On December 21, 1956, the court entered an order staying the issuance of the certified copy of opinion and judgment "until sixty days after the final decision of the Board in the Large Irregular Air Carrier Investigation, C.A.B. Docket No. 5132, *et al.*" Consequently, the supplemental carriers will be allowed to continue to operate under their exemption authority until the Board decides the phase of the case on which it reserved decision. The Board probably feels that it need take no action, because its order will not be set aside by the Court.

Petitioners, however, are not so sanguine. This case has been split and split again.[8] There is no guarantee that the erroneous judgment of the court below will not become effective, and it is only by resort to this Court that petitioners can adequately protect their interests and secure the correction of the error made by the court below.

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[8] The issues were first split by the Board. The Court of Appeals split the "law" issues from those which require reference to the evidentiary record and considered only the "law" issues. This "experiment" of the court below was explained by Judge Prettyman at the 17th Annual Judicial Conference of the District of Columbia Circuit—1956, as reported in Vol. XXIII, No. 11 of the Journal of the Bar Association of the District of Columbia, p. 676.

CONCLUSION

Because the court below has decided an important question of Federal law in a way which is probably in conflict with its own decisions and the decisions of this Court, has misinterpreted an important statute of the United States, and has invaded the province of the Civil Aeronautics Board in a manner calculated to retard the development of an adequate air-transportation system, it is respectfully submitted that this petition for a writ of certiorari be granted.

Respectfully submitted,

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February 16, 1957

APPENDIX

Pertinent Statutes

28 *U.S.C.A. Section 1254 (1).* Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

Civil Aeronautics Act of 1938, as amended:

Section 2. Declaration of policy

In the exercise and performance of its powers and duties under this chapter, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity—

(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or

advantages, or unfair or destructive competitive practices;

(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(e) The regulation of air commerce in such manner as to best promote its development and safety; and

(f) The encouragement and development of civil aeronautics.

Section 401(a). Certificate of public convenience and necessity

(a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation: *Provided,* That if an air carrier is engaged in such transportation on June 23, 1938, such air carrier may continue so to engage between the same terminal and intermediate points for one hundred and twenty days after said date, and thereafter until such time as the Board shall pass upon an application for a certificate for such transportation if within said one hundred and twenty days such air carrier files such application as provided herein.

Section 416. Classification and exemption of carriers

(a) The Board may from time to time establish such just and reasonable classifications or groups of air carriers for the purposes of this subchapter as the nature of the services performed by such air carriers shall require; and such just and reasonable rules, and

regulations, pursuant to and consistent with the provisions of this subchapter, to be observed by each such class or group, as the Board finds necessary in the public interest.

(b) (1) The Board, from time to time and to the extent necessary, may (except as provided in paragraph (2) of this subsection) exempt from the requirements of this subchapter or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder, any air carrier or class of air carriers, if it finds that the enforcement of this subchapter or such provision, or such rule, regulation, term, condition, or limitation is or would be an undue burden on such air carrier or class of air carriers by reason of the limited extent of, or unusual circumstances affecting, the operations of such air carrier or class of air carriers and is not in the public interest.

(2) The Board shall not exempt any air carrier from any provision of subsection (1) of section 401 of this title, except that (A) any air carrier not engaged in scheduled air transportation, and (B) to the extent that the operations of such air carrier are conducted during daylight hours, any air carrier engaged in scheduled air transportation, may be exempted from the provisions of paragraphs (1) and (2) of subsection (1) of section 401 of this title if the Board finds, after notice and hearing, that, by reason of the limited extent of, or unusual circumstances affecting, the operations of any such air carrier, the enforcement of such paragraphs is or would be such an undue burden on such air carrier as to obstruct its development and prevent it from beginning or continuing operations, and that the exemption of such

air carrier from such paragraphs would not adversely affect the public interest: *Provided,* That nothing in this subsection shall be deemed to authorize the Board to exempt any air carrier from any requirement of this chapter, or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder which provides for maximum flying hours for pilots or copilots.

Section 1006. Judicial Review.

(f) The judgment and decree of the court affirming, modifying, or setting aside any such order of the Board shall be subject only to review by the Supreme Court of the United States upon certification or certiorari as provided in sections 346 and 347 of Title 28.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13044

AMERICAN AIRLINES, INC., PETITIONER
NATIONAL AIRLINES, INC., INTERVENOR

v.

CIVIL AERONAUTICS BOARD, RESPONDENT
CAPITOL AIRWAYS, INC., QUAKER CITY AIRWAYS, INC., AIRCOACH TRANSPORT ASSOCIATION, and INDEPENDENT MILITARY AIR TRANSPORT ASSOCIATION, INTERVENORS

No. 13045

TRANS WORLD AIRLINES, INC., PETITIONER

v.

CIVIL AERONAUTICS BOARD, RESPONDENT

No. 13048

EASTERN AIR LINES, INC., PETITIONER

v.

CIVIL AERONAUTICS BOARD, RESPONDENT

No. 13052

PAN AMERICAN WORLD AIRWAYS, INC., PETITIONER

v.

CIVIL AERONAUTICS BOARD, RESPONDENT

No. 13054

DELTA AIR LINES, INC., PETITIONER

v.

CIVIL AERONAUTICS BOARD, RESPONDENT

No. 13061

UNITED AIR LINES, INC., PETITIONER

v.

CIVIL AERONAUTICS BOARD, RESPONDENT

No. 13063

CONTINENTAL AIR LINES, INC., PETITIONER

v.

CIVIL AERONAUTICS BOARD, RESPONDENT

No. 13064

NORTHWEST AIR LINES, INC., PETITIONER

v.

CIVIL AERONAUTICS BOARD, RESPONDENT

No. 13068

ALLEGHENY AIRLINES, INC., et. al., PETITIONERS

v.

CIVIL AERONAUTICS BOARD, RESPONDENT

No. 13116

WESTERN AIR LINES, INC., PETITIONER

v.

CIVIL AERONAUTICS BOARD, RESPONDENT

No. 13117

CAPITAL AIRLINES, INC., PETITIONER

v.

CIVIL AERONAUTICS BOARD, RESPONDENT

No. 13118

BRANIFF AIRWAYS, INC., PETITIONER

v.

CIVIL AERONAUTICS BOARD, RESPONDENT

No. 13120

PACIFIC NORTHERN AIRLINES, INC., PETITIONER

v.

CIVIL AERONAUTICS BOARD, RESPONDENT

No. 13121

ABILENE & SOUTHERN RAILWAY COMPANY, et. al., PETITIONERS

v.

CIVIL AERONAUTICS BOARD, RESPONDENT

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On Petitions for Review of Order of the Civil Aeronautics Board

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Decided July 19, 1956

Mr. Howard C. Westwood, with whom *Mr. Clifton J. Stratton, Jr.*, was on the brief for petitioner in No. 13044, argued for all petitioners and for intervenor National Airlines, Inc., in No. 13044. *Mr. Richard A. Fitzgerald* was on the brief for intervenor National Airlines, Inc., in No. 13044.

Mr. John F. Floberg for petitioners in No. 13068. *Mr. Edward DeGrazia* also entered an appearance for petitioners in No. 13068.

Mr. J. D. Feeney, Jr., with whom *Messrs. Amos M. Mathews* and *Thormund A. Miller* were on the brief, for petitioners in No. 13121.

Mr. James K. Crimmins was on the brief for petitioner in No. 13045. *Mr. William Caverly* also entered an appearance for petitioner in No. 13045. *Mr. W. Glen Harlan* was on the brief for petitioner in No. 13048. *Messrs. Henry J. Friendly, Robert C. Barnard* and *Leon Lipson* were on the brief for petitioner in No. 13052. *Messrs. L. Welch Pogue* and *James F. Bell* were on the brief for petitioner in No. 13054. *Mr. Robert L. Stern* was on the brief for petitioner in No. 13061. *Mr. James Francis Reilly* entered an appearance for petitioner in No. 13061. *Messrs. C. Edward Leasure* and *Herman F. Scheurer, Jr.*, were on the brief for petitioners in Nos. 13063 and 13064. *Messrs. L. Welch Pogue* and *James W. Callison* were on the brief for petitioner in No. 13116. *Messrs. Robert B. Hankins* and *Macon M. Arthur* were on the brief for petitioner in No. 13117. *Messrs. Hubert A. Schneider* and *B. Howell Hill* were on the brief for peti-

tioner in No. 13118. *Mr. Gerald P. O'Grady* was on the brief for petitioner in No. 13120.

Mr. O. D. Ozment, Chief, Litigation and Research Division, Civil Aeronautics Board, with whom *Mr. Franklin M. Stone,* General Counsel, Civil Aeronautics Board, *Mr. John H. Wanner,* Associate General Counsel, Civil Aeronautics Board, *Messrs. Robert L. Park, Gerald F. Krassa* and *Henry M. Switkay,* Attorneys, Civil Aeronautics Board, and *Mr. Daniel M. Friedman,* Attorney, Department of Justice, were on the brief, for respondent.

Mr. Albert F. Beitel, with whom *Mr. John H. Pratt* was on the brief, for intervenor Aircoach Transport Association, in No. 13044. *Messrs. Albert F. Beitel* and *John H. Pratt* entered appearances for intervenor Quaker City Airways, Inc., in No. 13044.

Mr. Coates Lear, with whom *Mr. Theodore I. Seamon* was on the brief, for intervenor Independent Military Air Transport Association, in No. 13044. *Messrs. Coates Lear* and *Theodore I. Seamon* entered appearances for intervenor Capitol Airways, Inc., in No. 13044.

Before PRETTYMAN, WILBUR K. MILLER, and FAHY, Circuit Judges.

PRETTYMAN, *Circuit Judge:* These are petitions to review an order of the Civil Aeronautics Board.[1] This order is the latest in a long series dealing with the problem of the non-scheduled or irregular air carriers. Petitioners are the certificated air carriers and certain railroads. The intervenors in behalf of the respondent are associations of irregular carriers. The respondent, of course, is the Civil Aeronautics Board. It is unnecessary to recite here the background of the present con-

[1] Order E-9744. Technically, a subsequent order, E-9884, denying reconsideration of the first order, is also involved.

troversy. It appears in its various stages in a long line of cases before this court and before the Board.[2]

The basic requirement heretofore imposed upon the irregular carriers by the Board has been that they operate without any reasonable semblance of regularity as to schedule or route. The basic change wrought by the present order is to remove this requirement of irregularity and to substitute in its place a maximum limitation upon the number of round trips permitted per month between any two points. The Board accomplishes this objective by granting these carriers an exemption under Section 416(b) of the Act.[3] The petitioners contest the validity of the order, so far as the present argument is concerned,[4] upon three basic grounds: (1) that the Act grants the Board no power to issue such an order; (2) that the order is not supported by the findings required by the statute; and (3) that the order is beyond the scope of the proceeding.

In 1951 the Board instituted a proceeding to determine its future policy with regard to Large Irregular

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[2] See, *e.g.*, Air Transport Associates v. Civil Aeronautics Board, 91 U.S. App. D.C. 147, 199 F.2d 181 (1952), *cert. denied*, 344 U.S. 922, 97 L.Ed. 710, 73 S.Ct. 386 (1953); American Air Transport v. Civil Aeronautics Board, 92 U.S. App. D.C. 117, 206 F.2d 423 (1953); Eastern Airlines v. Civil Aeronautics Board, 87 U.S. App. D.C. 331, 185 F.2d 426 (1950), *vacated*, 341 U.S. 901, 95 L.Ed. 1341, 71 S.Ct. 613 (1951); New England Air Express v. Civil Aeronautics Board, 90 U.S. App. D.C. 215, 194 F.2d 894 (1952); Large Irregular Carriers, Exemptions, 11 C.A.B. 609 (1950).

[3] 52 STAT. 1004 (1938), as amended, 49 U.S.C.A. § 496(b).

[4] The petitions for review presented, generally speaking, issues of law and also issues requiring examination of the evidentiary record. This record totaled fifty thousand pages. By a prehearing order under Rule 38(k) of the Rules of this Court, the court ordered that the issues of law be briefed, argued and decided and that pending such disposition the evidentiary issues be reserved.

Air Carriers.[5] Some sixty-six applicants were involved. Two examiners began hearings, in which not only the general problem was involved but the individual qualifications of the several applicants were treated as issues. Testimony as to about half of the applicants had been presented when the Board deferred further hearing on such qualifications and directed that the proceeding go forward upon the general questions. The examiners presented an initial decision. Exceptions to it were filed, and oral argument was held before the Board. A majority rendered a long opinion and an order. Two members dissented. In the order the Board recited that the enforcement of the certification provisions of the Act (Sections 401(a),[6] 404(a)[7] and 405(e)[8]) would be an undue burden on the carriers by reason of the limited extent of, and the unusual circumstances affecting, the operations of such carriers. It ordered that forty-nine of the applicants (naming them) be temporarily exempted from the certification requirements, subject to certain terms, and that each be issued an "Interim Operating Authorization" to terminate sixty days after the Board should dispose of the several individual applications for exemption authority. The terms attached to the order were long and in some detail. The principal one was that the carrier not engage in more than ten flights in the same direction between any single pair of points in any calendar month. In respect to this condition the Board said in its order:

> "Whenever, in the judgment of the Board, there is reason to believe that the foregoing ten flight

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[5] The proceeding was known as The Large Irregular Air Carrier Investigation, Docket No. 5132.

[6] 52 STAT. 987 (1938), as amended, 49 U.S.C.A. § 481(a).

[7] 52 STAT. 993 (1938), as amended, 49 U.S.C.A. § 484(a).

[8] 52 STAT. 995 (1938), as amended, 49 U.S.C.A. § 485(e).

limitation is insufficient to confine the operations of supplemental air carriers as a class to the rendition of the supplemental services for which they are authorized, and that the operations of such carriers pose a substantial threat to the stability and soundness of the certificated air carrier system, the Board may at any time reopen the proceeding and, after notice and opportunity for argument and with or without additional evidentiary hearing, make such downward adjustments in the maximum flight limitation as the Board may deem necessary or desirable. The interim operating authorizations granted by this order are herein expressly conditioned upon and subject to the reserved right of the Board to make further limitations, restrictions or modifications of the ten flight limitation, including a reduction in the number of such flights, to insure that the services remain supplemental."

The opinion of the Board makes clear that the ten flights per month may be conducted upon the basis of a regular schedule. The opinion also makes clear that the Board contemplated that these air carriers could offer unlimited charter operations on a plane-load basis in domestic carriage.

The reasoning of the Board may be summarized. It found that the services performed by the irregular carriers, including charter operations, individually ticketed coach flights, specialized services, and military air-lift, have proven of importance to both the irregular carriers and the public, meeting real needs. It concluded that its policy should be directed toward their survival and healthy growth. It determined that the services rendered by the irregular carriers could not be rendered satisfactorily by the presently certificated carriers, which have fixed commitments to route and schedule operation. It found that the elimination of the restriction against regularity would help the public and strengthen the supplemental carriers, and that it would aid in the administration and enforcement of regulations. The Board emphasized that

it selected the number ten as the number of permissible trips by taking into account on an average basis the number of permissible trips which might be operated by these carriers under heretofore existing regulations.

The Board turned its particular attention to the suggestion that the new scope of supplemental operations would open the door to unlimited competition which would affect adversely the certificated carriers. It held that the hard facts of economic realism would operate against such a situation, reciting in detail the considerations which led to this conclusion. It said it would not permit the supplemental carriers to combine and integrate their operations. It said it would "underscore for all concerned" that the supplemental carriers are to be restricted to needs they are designed to meet and that if they posed a threat to the certificated system "they must face up to a prompt and effective diminution in the maximum permissible flight frequencies."

The Board made a comparatively brief recital in respect to the undue burden upon the applicants and the unusual circumstances affecting their operations, a matter which we shall discuss in detail hereinafter. The Board reserved decision as to the nature and form of the authority to be granted for the supplemental air transportation it contemplated until the completion of the hearings upon the qualifications of the individual applicants, in the meantime issuing temporary authorization.

Petitioners vigorously attack the order upon the ground that it is not authorized by the statute. Section 416(b)(1) reads as follows:

> "The Board, from time to time and to the extent necessary, may (except as provided in paragraph (2) of this subsection) exempt from the requirements of this title or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder, any air carrier or class of air carriers, if it

> finds that the enforcement of this title or such provision, or such rule, regulation, term, condition, or limitation is or would be an undue burden on such air carrier or class of air carriers by reason of the limited extent of, or unusual circumstances affecting, the operations of such air carrier or class of air carriers and is not in the public interest."

It is clear that the foregoing provision has two basic parts. In the first place, in broad language, it empowers the Board to exempt any class of carriers from "any provision" of the statute or "any rule, regulation, term, condition, or limitation prescribed thereunder." This is sweeping language. The second basic provision in the paragraph is that in order to exert this broad power of exemption the Board must find that enforcement of the statutory provision is or would be "an undue burden" on the class of carriers by reason of the limited extent of, or unusual circumstances affecting, the operation of such carriers. The Board must further find that enforcement of the provision is not in the public interest.

This first point of petitioners is that the Board has no authority to issue this order as an exemption order with or without findings such as the ones described in the last clause of the quoted section. They say the order, in and of itself, is outside the scope of the quoted exemption section. The order, they say, represents something the Board cannot do by exemption. Although, as will develop, we think another contention dispositive of this proceeding, a ruling upon that other contention alone would leave the controversy in a wholly unsettled state. The parties have briefed and argued the point now before us, and we shall dispose of it. To treat it we must assume *arguendo* that valid findings as to undue burden and public interest are made.

The petitioners urge that the basic concept of the statute enacted by the Congress for the regulation of the air industry is of a certificated system. Section 401(a) specifically requires that no air carrier shall en-

gage in any air transportation unless there is in force a certificate issued by the Board. Various subsections, notably, *inter alia,* (d), (f) and (k) of Section 401, make provisions respecting certificates and certificated carriers. Petitioners say Congress did not intend that the Board might, by the use of the exemption provision of Section 416(b), destroy the elaborate basic requirements of the Act for a certificated system of airplane carriage. The petitioners are quite correct in that contention. Despite the broad language of Section 416(b) we think it is perfectly clear that the Congress did not set up so elaborate a series of provisions in respect to the certification of carriers, and the public interest, convenience and necessity therein involved, and at the same time grant its administrative agency power to destroy those elaborate provisions. We think there is and must be a boundary to the authority of the Board under its exemption power to impinge upon the certificated service.

But the Board does not disagree with the foregoing. Its position is that a sound national transportation system requires, from the standpoints both of the normal traveling public and of the national defense, a service supplemental to that which is and can be rendered by carriers certificated to routes, schedules and services. It declares that the proposed supplemental carriage must not in the aggregate jeopardize the certificated carrier system. It says that the main and basic transportation system must be a certificated system but that in addition there must be a supplemental service. It not only thus declares its position but, as we have seen, it inserted both in its opinion and in its order a specific provision that, if experience should show that the supplemental operation poses a substantial threat to the certificated system, adjustments will be made to prevent that result. The position of the Board is a rational one. There is undoubtedly a demand for charter service and for extra ticketed service in times of peak demand. If there is to

be supplemental service rendered, it seems rational that supplemental carriers, devoted entirely to that task, should be authorized to operate. We accept the declarations of the Board in these respects literally and at full face value. In agreeing with its position we do so upon an acceptance of its concern for the certificated carriers and its purpose to protect them. We believe this is required by the general scheme of the statute.

The real controversy, then, upon the present point is not whether the Board may or may not unduly impinge upon the certificated system by use of the exemption power but whether it has in fact done so. Petitioners urge that ten flights per month between any pair of points upon a regularly scheduled basis are an obvious impingement upon the certificated carrier serving those points. The Board did three things in this respect. It found, upon the basis of the evidence, that such impingement would not be likely to occur. It next announced that it would not permit combinations or collusions between the supplemental carriers which might in total adversely affect the certificated carriers. And, thirdly, as we have already said, it announced that if the results proved different from its anticipations it would revise the order to eliminate the adverse effects.

We think we could not superimpose our judgment upon that of the Board upon such an issue, even if we had a judgment different from that of the Board. Experience alone will demonstrate the true answer. The Board's expert opinion is that the system it has devised, with its terms and limitations, will not seriously conflict with the interests of the certificated carriers. And it goes further and says it will insure that such conflict does not ensue.

In sum it seems to us that the judgment of the Board, that an air service supplemental to the certificated services is in the public interest, is a rational judgment and one which we must accept; that the finding of the Board that its proposed supplemental service will not result in

adverse economic effects upon the certificated system is a conclusion which the Board is entitled to draw if the record supports it with evidence; and that the assurance of the Board that it will not hereafter permit adverse economic effects to jeopardize the certificated system or to pose a substantial threat to it, should be accepted and respected by this court. Having reached that point we then conclude that if the Board makes the required findings as to undue burden, its present plan for a supplemental air carriage, effecting no excessive impact upon the certificated system, would be within the statutory exemption power (*i.e.*, Section 416(b)).

The second main point urged by petitioners is that the Board failed to make the findings required by the statute to support the exemption under Section 416(b). That section, as we have already noted, requires that the Board find "that the enforcement of this title or such provision, or such rule, regulation, term, condition, or limitation is or would be an undue burden on such air carrier or class of air carriers by reasons of the limited extent of, or unusual circumstances affecting, the operations of such air carrier or class of air carriers and is not in the public interest."

The exemption here involved is from the enforcement of the provision of the statute requiring certification. The question therefore is whether the requirement of certification would be an undue burden on this class of air carriers by reason of either the limited extent of air operations or unusual circumstances affecting their operations; and whether the requirement that this class of carriers be certified is not in the public interest. We find in the opinion of the Board a statement that "In these circumstances, very little purpose would be served by withholding the enlarged operating authority for what may be a lengthy period, and to do so would constitute an undue burden upon the applicants." But that statement does not support a conclusion that an exemption

rather than a certification should be granted. It supports a conclusion only that some action should be taken promptly. We also find in the order a conclusion stated in the language of the statute, but the order contains no findings to support that conclusion. We have examined the opinion and the order with care, but we cannot ascertain from them what the Board deems to be the limited extent of the operations of the supplemental carriers which would make a certification an undue burden on the carriers, nor can we determine what unusual circumstances affecting the operations of the supplemental carriers would make certification an undue burden on these carriers. Neither can we ascertain why the Board is of opinion that the certification of these supplemental carriers is not in the public interest.

We think the Board must make findings in the foregoing respects in order that the court, in the exercise of its review function, may determine whether the grant of the exemption is within the statutory authority of Section 416(b). It might be that the operating authority granted these carriers should be exempted from the requirement of Section 401(f) that the certificate specify the terminal points between which the carrier is authorized to engage in air transportation, or from the required specification of the service to be rendered. We do not know whether that is what the Board had in mind. But the question before us is not whether the supplemental carriers should be exempted from one or more of the subsidiary requirements of certification but whether they should be exempted from certification altogether. We repeat we cannot ascertain from the opinion or order what undue burden the Board thinks certification would be or why it thinks certification of this supplemental service would not be in the public interest. We are of opinion, therefore, that the case must be remanded in order that the Board may make findings to support the

conclusions which the statute makes necessary to the exercise of the exemption power.

We are conscious of the fact that the operating authority issued under the order before us is an interim authority, to be effective only until the Board has concluded its consideration of the qualifications of the various applicants. If the Board had rested a finding of undue burden upon the fact that the interim for which this operating authority is issued is short, whereas the remainder of a certification proceeding would be long, we would be close to the ruling of this court in the air mail case.[9] But we do not understand the Board to rest upon the temporary feature of the order. The purport of the discussion in the opinion of the Board is that the exemption power may be exercised to accomplish the permanent ends it has in mind for these supplemental carriers and does not depend upon or revolve about the temporary character of the exemption presently authorized.

The Board says no detailed findings are required, referring to the fact that this was a rule-making proceeding and relying upon our opinion in *Eastern Airlines* v. *Civil Aeronautics Board*.[10] But Section 416(b) itself requires that the Board shall find these conditions to exist, and it is clear that in order for the court to determine whether the Board acted within its statutory authority it must know what the Board finds. The *Eastern Airlines* case held only that Section 416(b)(1) does not require notice and full hearing and that the proceedings which occurred in that case were sufficient to comply with the procedural requirements of the statute.

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[9] American Airlines v. Civil Aeronautics Board, — U.S. App. D.C. —, 231 F.2d 483 (D.C.Cir. 1956).

[10] 87 U.S. App. D.C. 331, 185 F.2d 426 (1950), *vacated*, 341 U.S. 901, 95 L.Ed. 1341, 71 S.Ct. 613 (1951).

In its brief the Board points to various subsidiary findings made by the examiners and adopted by the Board which are factual in respect to the supplemental carriers, such as comparisons between the new limitation and the old limitations in the irregular air carrier regulations, the overall financial resources and revenues of these carriers, the history of these carriers, the steady worsening in their position, and similar facts. But there is nothing to indicate upon what facts or findings the Board based its conclusion that a requirement of certification would be an undue burden upon these carriers. The opinion and the order leave us at a complete loss upon that subject.

We fully realize that the irregular carriers have been operating under exemption authority for many years, and it seems possible, if indeed not probable, that the Board has not heretofore stated its conclusions as to undue burden and public interest in any more extensive form than it does now. But until now these carriers have not operated with any semblance of regularity. They were truly irregular carriers, as they were called. Now they are to become supplemental carriers and no longer irregular. They are moved much closer to the certificated services. The burden of certification is no longer obvious. Moreover we are not referred to an adjudication of a challenge to the presence of an undue burden upon the irregular operation. There is now before us for adjudication a challenge to the burden asserted to exist upon supplemental operation. We think that, if the Board can institute a regular supplemental air service without certification and merely by exercising the exemption power, it may not do so without first clearly meeting the statutory prerequisites to the exercise of that power.

The Board demonstrated, as we have indicated in the first part of this opinion, that the supplemental carriers have a place in the national transportation system and that they should be authorized to operate. But the ques-

tion now under consideration is whether they should be authorized by certificates, premised upon public convenience and necessity and specifying in some fashion the service which such carriers will be obligated to perform, or whether their operation may be authorized by a simple exemption from all the certification requirements of the statute. To validate an order of exemption the Board must comply with the statute; *i.e.*, it must find what the statute requires it to find, not in conclusory fashion in the statutory language but in such fashion that a reviewing court can test the validity of the finding.

The petitioners' third main point is that the order finally issued was not within the scope of the proceeding instituted by the Board's initial orders. We agree with the Board upon this point, basing that conclusion upon the view of the order here under review which we have heretofore described in this opinion.

The cases will be remanded for further proceedings.

Judgment

These cases came on to be heard on the record from the Civil Aeronautics Board, and were argued by counsel.

On Consideration Whereof, It is order and adjudged by this Court that the order of the Civil Aeronautics Board on review in these cases be, and the same is hereby, set aside and that these cases be, and the same are hereby, remanded to the said Civil Aeronautics Board for further proceedings consistent with the opinion to this Court.

Dated: July 19, 1956.

Per Curiam.